

So Ordered.
Dated: June 30th, 2016



Frank L. Kurtz
Frank L. Kurtz
Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON**

IN RE:

RANDALL L. HARPER,

Debtor.

Case No. 15-02500-FLK11

**FINDINGS OF FACT &
CONCLUSIONS OF LAW RE:
FINAL APPROVAL OF
DISCLOSURE STATEMENT AND
CONFIRMATION OF PLAN OF
REORGANIZATION**

**FINDINGS OF FACT &
CONCLUSIONS OF LAW**

-1-



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1 This matter came on for hearing on June 28, 2016 on Debtor's request
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3 for final approval of its Disclosure Statement ("**Disclosure Statement**")
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5 (Docket No. 149) and confirmation of the Debtor's proposed Plan of
6
7 Reorganization ("**Plan**") (Docket No. 150). The Court has considered the
8
9 Declaration of Randall L. Harper as well as any testimony elicited at the
10
11 confirmation hearing. Based upon the evidence, the Court hereby finds and
12
13 concludes as follows:

14 *I. Findings of Fact*

15 1. The Court has entered an order conditionally approving the
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17 Disclosure Statement (Docket No. 144). In conditionally approving the
18
19 Disclosure Statement, the Court found that the Disclosure Statement likely
20
21 contained sufficient information and disclosure to allow creditors to make an
22
23 informed decision about voting on the Debtor's Plan. No objections to
24
25 approval of the Disclosure Statement have been filed since it was
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27 conditionally approved. The Court has re-evaluated the Disclosure Statement
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29 and confirms its finding that the Disclosure Statement contains adequate
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31 information to allow creditors to make an informed decision about voting on
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33 the Debtor's Plan.
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**FINDINGS OF FACT &
CONCLUSIONS OF LAW**

1 2. The Debtor gave proper notice of its Plan and the hearing on
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3 confirmation of the Plan and final approval of the Disclosure Statement to
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5 creditors and parties in interest as required by applicable provisions of
6
7 Bankruptcy law and Bankruptcy rules.

8 3. Class 2 – priority claims (“**IRS**”); Class 5 – secured claim of
9
10 IRS; Class 6 – secured claim of Yakima County; Class 7 – secured claim of
11
12 Financial Pacific; and Class 8 - general unsecured claimants were impaired
13
14 under the Plan.

15 4. The Debtor has properly filed the Report of Balloting (Docket
16
17 No. 184), indicating that all ballots received from Class 6 & 7 accepted the
18
19 Plan. Although the Report of Balloting indicated that the majority of Class 8
20
21 claimants who filed a ballot rejected the Plan, the Debtor has submitted that
22
23 certain Stipulation Between Debtor, the Unsecured Creditors’ Committee, and
24
25 Certain General Unsecured Claimants (“**Stipulation**”) [Docket No. 192] in
26
27 which the majority of the Class 8 Claimants that timely submitted a ballot
28
29 have now accepted the Plan.
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1 5. The Plan, as amended by the Stipulation, has been accepted in
2
3 writing by the creditors and equity security holders whose acceptance is
4 required by law.
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6 6. The Plan, as amended by the Stipulation, complies with all
7
8 provisions of Title 11 of the United States Code as well as other applicable
9 law.
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11 7. The Plan, as amended by the Stipulation, has been proposed in
12
13 good faith and not by any means forbidden by law.
14

15 8. All payments made or promised by the Debtor under the Plan, as
16
17 amended by the Stipulation, for services or for costs and expenses in, or in
18 connection with, the Plan and incident to the case, have been fully disclosed to
19 the Court and are reasonable and are hereby approved, or, if to be fixed after
20 confirmation of the Plan, will be subject to approval of the Court. No party is
21 issuing securities or acquiring property under the Plan.
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25 9. After confirmation of the Plan, as amended by the Stipulation,
26
27 Randall L. Harper will continue to manage the business operations of the
28 Debtor and receive a salary as provided by the Plan, as amended by the
29 Stipulation.
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1 10. The retention of Randall L. Harper to manage the business
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3 operations of the Debtor is in the best interests of the Debtor, the Estate and
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5 creditors because current management has demonstrated that they can
6
7 profitably run the Debtor's business in a way which is likely to result in Plan
8
9 payments being made.

10 11. Liquidation of the Debtor would likely result in a shortfall in
11
12 payment to the Class 2 claimants, meaning that in a chapter 7 liquidation no
13
14 funds would be available for distribution to Class 8 Unsecured creditors.
15
16 Under the Plan, as amended by the Stipulation, Class 8 Unsecured Creditors
17
18 are receiving payments of one hundred percent (100%) of the principal amount
19
20 of their allowed claims, with interest.

21 12. The sole objection to the Plan, as amended by the Stipulation,
22
23 timely or otherwise, has been withdrawn.

24 13. With respect to the impaired classes under the Plan, as amended
25
26 by the Stipulation, each holder of a claim in such class has either: (a) accepted
27
28 the Plan; or (b) will receive greater distributions under the Plan than if the case
29
30 were converted to a case under chapter 7 of the Bankruptcy Code.

1 14. Classes 1, 3, 4, and 9 are unimpaired or not entitled to vote on the
2 Plan.
3

4 15. Class 2 constitutes the priority tax claims of certain governmental
5 entities. The Plan, as amended by the Stipulation, provides for payment of the
6 amount of the Class 2 claims in regular installments over a period no greater
7 than five (5) years from the effective date of the Plan. The payments called
8 for by the Plan will provide Class 2 claimants with a total value, as of the
9 effective date of the Plan, equal to the allowed amount of such claims. The
10 Plan calls for the payment of interest on such Class 2 claims in the amount
11 provided for by applicable law. Payments to the Class 2 claimants under the
12 Plan are upon terms no less favorable than those to any other non-priority
13 unsecured creditor.
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22 16. The Debtor's operations during the course of the case (as
23 evidenced by the Debtor's monthly operating statements on file with the
24 Court), together with the Debtor's projections for post-confirmation payments
25 contained in the Disclosure Statement demonstrate that confirmation of the
26 Debtor's Plan, as amended by the Stipulation, is not likely to be followed by
27 liquidation or the need for further financial reorganization.
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1 17. The Plan provides for the payment of all United States Trustee
2 fees payable under 28 U.S.C. §1930.
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4 18. All payments to insiders during the course of the case have been
5 disclosed.
6

7 19. The Effective Date of the Plan, as amended by the Stipulation, is
8 the day that is fourteen (14) days after the date the order confirming the Plan is
9 entered.
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11 20. Substantial Consummation of the Plan, as amended by the
12 Stipulation, will occur upon the first payment to unsecured creditors being
13 made in accordance with the terms of the Plan.
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19 *II. Conclusions of Law*

20 Based upon the foregoing findings of fact, the pleadings filed in this
21 case and the testimony provided at the confirmation hearing, the Court
22 concludes that:
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24 A. The requirements for confirmation of the Plan, as amended by the
25 Stipulation, imposed by the Bankruptcy Code, Federal Rules of Bankruptcy
26 Procedure and other applicable law, including the requirements of 11 U.S.C.
27 §1129 have been met.
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**FINDINGS OF FACT &
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1 B. The requirements for approval of the Disclosure Statement
2
3 imposed by the Bankruptcy Code, Federal Rules of Bankruptcy Procedure and
4
5 other applicable law, including the requirements of 11 U.S.C. §1125 have
6
7 been met. The Disclosure Statement contains adequate information as
8
9 required by 11 U.S.C. §1125.

10 C. The Disclosure Statement should be approved.

11 D. The Plan, as amended by the Stipulation, should be confirmed.

12 E. To the extent that the above entered findings of fact are, in fact,
13
14 conclusions of law, such findings are hereby incorporated into these
15
16 conclusions of law and should be denominated as such.
17

18 F. The provisions of Chapter 11 have been complied with and the
19
20 Plan, as amended by the Stipulation, has been proposed in good faith and not
21
22 by means forbidden by law.
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24 G. Any and all payments for which Bankruptcy Court approval is
25
26 required, including authorization required by 11 U.S.C. §§327 and 330, shall
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28 remain subject to Bankruptcy Court approval notwithstanding confirmation of
29
30 the Plan, as amended by the Stipulation.
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1 H. The Debtor has disclosed the identity and affiliations of all parties
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3 who are to serve as officers and directors under the Plan, as amended by the
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5 Stipulation. The Debtor has disclosed the identity of all insiders who will be
6
7 paid a salary or consulting fees under the Plan, as amended by the Stipulation.
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9 The Debtor's disclosures satisfy the requirements of 11 U.S.C. §1129(a)(5).

10 I. No governmental regulatory commission is required to approve
11
12 the Plan or the terms of the Plan.

13 J. The Debtor's Plan, as amended by the Stipulation, satisfies the
14
15 requirements of 11 U.S.C. §1129(a)(7) in that an impaired class (Classes 6, 7
16
17 & 8) has accepted the Plan. Each member of the impaired classes will receive
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19 value, as of the effective date of the plan, that is not less than the amount such
20
21 claimant would receive if the Debtor were liquidated under Chapter 7 of the
22
23 Bankruptcy Code.

24 K. All impaired classes under the Plan, as amended by the
25
26 Stipulation, have accepted the Plan or will receive payments of a value equal
27
28 to the allowed principal amount of its claim.

29 L. Administrative Claims described by 11 U.S.C. §503(b) and 11
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31 U.S.C. §507(a)(2) are provided for as required by 11 U.S.C. §1129(a)(9).
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1 M. Priority claims (Class 2) are provided for as required by law.

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3 N. An impaired claim – Classes 6, 7 & 8 - has accepted the Plan and
4 the Plan, as amended by the Stipulation, therefore meets the requirements of
5
6 11 U.S.C. §1129(a)(10).
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8 O. Confirmation of the Plan, as amended by the Stipulation, is not
9
10 likely to be followed by the liquidation, or the need for further financial
11
12 reorganization of the Debtor.

13 P. The Effective Date of the Plan, as amended by the Stipulation,
14
15 will be the date that is fourteen (14) days following entry of the order of
16
17 confirmation.
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19 Q. Substantial confirmation of the Plan, as amended by the
20
21 Stipulation, will occur only upon making the first payment to Class 8
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23 unsecured creditors as required by the Plan, as amended by the Stipulation.
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1 R. Creditors and parties in interest were given notice of the
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3 confirmation hearing and no objections thereto were made, or if made, have
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5 been withdrawn, resolved or overruled.

6 / / / End of Order / / /

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8
9 /s/ Joshua J. Busey
10 Joshua J. Busey (WSBA 34312)
11 Bailey & Busey PLLC
12 Counsel for Elite Nursing, PLLC
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**FINDINGS OF FACT &
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